

Bias: An Annotated Bibliography

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Bias is a subject that has received a great deal of attention from lawyers, legal scholars, and researchers in other fields in recent decades, particularly as the focus of thinking about bias has shifted toward recognition of the importance of implicit or unconscious biases. This bibliography explores some areas of the literature that may be of most interest to JAAML readers. It covers issues about bias in contexts that are obviously important for child and family law attorneys, such as bias in child and family law doctrines and in family court proceedings. It also covers some of the key literature about bias in a wide range of other areas of law. In addition to enhancing understandings and thinking about bias more generally, that literature may illuminate and spark further thinking about bias in the child and family law realm. The bibliography primarily focuses on articles published in the past five years, from 2015 to 2020, but reaches back further for some articles of particular significance or relevance.

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ABA Model Rule 8.4(g)

Bradley S. Abramson, *ABA Model Rule 8.4(g): Constitutional and Other Concerns for Matrimonial Lawyers*, 31 J. AM. ACAD. MATRIM. LAW. 283 (2019) (analyzing how the ABA's Model Rule would apply to the professional circumstances faced by matrimonial lawyers).

Rebecca Aviel, *Rule 8.4(g) and the First Amendment: Distinguishing Between Discrimination and Free Speech*, 31 GEO. J. LEG. ETHICS 31 (2018) (suggesting that the ABA's Model Rule should be revised to better reflect the distinction between discrimination and harassment and the expression of controversial viewpoints).

Josh Blackman, *ABA Model Rule 8.4(g) in the States*, 68 CATH. U. L. REV. 629 (2019) (reviewing state reactions to the ABA's Model Rule).

Josh Blackman, *Reply: A Pause for State Courts Considering Model Rule 8.4(g)*, 30 GEO. J. LEG. ETHICS 241 (2017) (warning courts about First Amendment concerns with the ABA's Model Rule).

George W. Dent, Jr., *Model Rule 8.4(g): Blatantly Unconstitutional and Blatantly Political*, 32 NOTRE DAME J.L. ETHICS & PUB. POL'Y 135 (2018) (criticizing the ABA for adopting a Model Rule that poses First Amendment concerns and can be applied selectively as a partisan political weapon).

Stephen Gillers, *A Rule to Forbid Bias and Harassment in Law Practice: A Guide for State Courts Considering Model 8.4(g)*, 30 GEO. J. LEG. ETHICS 195 (2017) (identifying issues that must be addressed as states decide whether to adopt the ABA's Model Rule).

Andrew F. Halaby & Brianna L. Long, *New Model Rule of Professional Conduct 8.4(g): Legislative History, Enforceability*

Questions, and a Call for Scholarship, 41 J. LEG. PROF. 201 (2017) (discussing key legal problems with the ABA's Model Rule).

Ashley Hart, Note, *Sexism "Related to the Practice of Law": The ABA Model Rule 8.4(g) Controversy*, 51 IND. L. REV. 525 (2018) (discussing the application of the ABA's Model Rule to sexist conduct in the legal community).

Claudia E. Haupt, *Antidiscrimination in the Legal Profession and the First Amendment: A Partial Defense of Model Rule 8.4(g)*, 19 U. PA. J. CONST. L. ONLINE 1 (2017) (arguing that First Amendment principles are generally compatible with having a rule prohibiting discrimination in the practice of law, but free speech principles prohibit an expansive interpretation of the Model Rule's application to "conduct related to the practice of law").

Wendy N. Hess, *Addressing Sexual Harassment in the Legal Profession: The Opportunity to Use Model Rule 8.4(g) to Protect Women from Harassment*, 96 U. DET. MERCY L. REV. 579 (2019) (discussing the benefits of adopting the ABA's Model Rule).

Latonia Haney Keith, *Cultural Competency in a Post-Model Rule 8.4(g) World*, 25 DUKE J. GENDER L. & POL'Y 1 (2017) (arguing that lawyers have an obligation to make cultural competency a core aspect of legal education and practice).

Michael S. McGinniss, *Expressing Conscience with Candor: Saint Thomas More and First Freedoms in the Legal Profession*, 42 HARV. J.L. & PUB. POL'Y 173 (2019) (discussing the controversy over the ABA's Model Rule, including socially conservative lawyers' justified distrust of new speech restrictions).

Jack Park, *ABA Model Rule 8.4(g): An Exercise in Coercing Virtue?*, 22 CHAP. L. REV. 267 (2019) (examining why states have rejected the ABA's Model Rule).

Robert N. Weiner, *"Nothing to See Here": Model Rule of Professional Conduct 8.4(g) and the First Amendment*, 41 HARV. J.L. & PUB. POL'Y 125 (2018) (arguing that criticism of the ABA's Model Rule is overblown).

Katie Marie Wroten, Note, *"G" Is More Than "PC" for Georgia: Why Prospective Adoption of ABA Model Rule 8.4(g) Is a Viable Measure to Combat Discrimination and Harassment*, 52 GA. L.

REV. 341 (2017) (encouraging adoption of the ABA's Model Rule).

Cognitive Bias

Effects on Criminal Prosecutions

Robert P. Mosteller, *Pernicious Inferences: Double Counting and Perception and Evaluation Bias in Criminal Cases*, 58 HOWARD L.J. 365 (2015) (explaining the risks of potential co-dependence of evidence in criminal cases, where two pieces of evidence against a defendant are connected rather than independent).

Sarah Anne Mourer, *Believe It or Not: Mitigating the Negative Effects Personal Belief and Bias Have on the Criminal Justice System*, 43 HOFSTRA L. REV. 1087 (2015) (discussing how criminal cases can be infected with bias when a prosecutor or a defense attorney have firm pre-trial beliefs about an accused's guilt or innocence).

D. Kim Rossmo & Joycelyn M. Pollock, *Confirmation Bias and Other Systemic Causes of Wrongful Convictions: A Sentinel Events Perspective*, 11 NE. U. L. REV. 790 (2019) (discussing how cognitive biases contribute to wrongful convictions).

Huang Shiyuan, *Cognitive Biases that Led to Wrongful Convictions: Illustrated by Twenty-Three Erroneous Chinese Cases*, 54 CAL. W. L. REV. 103 (2017) (discussing how cognitive biases, such as tunnel vision and hindsight bias, contributed to wrongful convictions in China).

Christopher T. Stein & Michelle Drouin, *Cognitive Bias in the Courtroom: Combating the Anchoring Effect Through Tactical Debiasing*, 52 U.S.F. L. REV. 393 (2018) (reporting results of experiment testing whether prosecutors' sentencing requests have an anchoring effect that bias decisions about criminal sentencing and proposing strategies to counter this effect).

Molly J. Walker Wilson, *Defense Attorney Bias and the Rush to the Plea*, 65 U. KAN. L. REV. 271 (2016) (discussing the cognitive biases that make public defenders too likely to urge clients to plead guilty, such as priming, anchoring, belief perseverance, and confirmation and over-confidence biases).

Effects on Experts and Investigators

Katherine Judson, *Bias, Subjectivity, and Wrongful Convictions*, 50 U. MICH. J.L. REFORM 779 (2017) (transcript of presentation on how cognitive biases can affect science-dependent child abuse cases).

Jeff Kukucka & Saul M. Kassin, *Do Confessions Taint Perceptions of Handwriting Evidence? An Empirical Test of the Forensic Confirmation Bias*, 38 LAW & HUM. BEHAV. 256 (2014) (reporting results of a study finding that experts who read a case summary in which the defendant had confessed were more likely to erroneously conclude that handwriting samples from the defendant matched those from the perpetrator).

John J. Lentini, *Contextual Bias in Fire Investigations*, BRIEF, Spring 2015, at 40 (exploring how contextual bias can influence the work of fire investigators who serve simultaneously as law enforcement officers).

Erin Morris, *Cognitive Bias and the Evaluation of Forensic Evidence*, CHAMPION, May 2012, at 12 (discussing the importance of informing jurors about the risk of cognitive bias in the evaluation of forensic evidence).

John Rafael Peña Perez, Comment, *Confronting the Forensic Confirmation Bias*, 33 YALE L. & POL'Y REV. 457 (2015) (considering ways to reduce the risk that forensic analysts are biased toward aligning their interpretations of evidence with the preexisting theories of prosecutors and law enforcement officials).

Elizabeth J. Reese, Comment, *Techniques for Mitigating Cognitive Biases in Fingerprint Identification*, 59 UCLA L. REV. 1252 (2012) (examining debiasing techniques that could reduce cognitive biases in fingerprint identification).

Dan Simon, *Minimizing Error and Bias in Death Investigations*, 49 SETON HALL L. REV. 255 (2019) (discussing how cognitive biases can affect forensic investigation of deaths).

Effects on Judges

Matthew I. Fraidlin, *Decision-Making in Dependency Court: Heuristics, Cognitive Biases, and Accountability*, 60 CLEV. ST. L.

REV. 913 (2013) (arguing that dependency court decisions about placing children in foster care are biased by the lack of pre-decisional accountability and the abundance of post-decisional opportunities to self-defensively bolster the decisions previously made).

Prescott Loveland, *Acknowledging and Protecting Against Judicial Bias at Fact-Finding in Juvenile Court*, 45 *FORDHAM URB. L.J.* 283 (2018) (discussing the biases that can undermine fact finding by juvenile court judges).

Aileen Oeberst, *When Being Wise After the Event Results in Injustice: Evidence for Hindsight Bias in Judges' Negligence Assessments*, 22 *PSYCHOL. PUB. POL'Y & L.* 271 (2016) (reporting results of an experiment finding that judges' decisions about whether someone acted negligently were biased by hindsight, because someone looking back at an event that already occurred is more likely to deem it was foreseeable than if the person had considered the possibility of the event before it occurred).

Arin N. Reeves, *The Ineffectiveness of Efficiency*, *JUDGES' J.*, Fall 2015, at 34 (explaining how cognitive shortcuts are efficient but introduce biases into judges' thinking).

David C. Sarnacki, *Winning Divorce Trials*, *MICH. B.J.*, June 2002, at 22 (advising lawyers on how to overcome cognitive biases of judges in divorce cases, including confirmation bias, availability bias, and belief perseverance bias).

Christine M. Venter, *The Case Against Oral Argument*, 14 *LEG. COMM. & RHETORIC: JALWD* 45 (2017) (reporting results of a study on oral arguments at the U.S. Court of Appeals for the Seventh Circuit, which suggest that having oral arguments may not be an effective use of judicial resources because judges are subject to confirmation biases that prevent them from shifting away from their initial views about cases).

Andrew Wistrich et al., *Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding*, 153 *U. PA. L. REV.* 1251 (2005) (discussing results of an experiment that found judges' awards of damages in hypothetical torts case were affected by knowing the figures the parties had discussed in settle-

ment talks, even though that information was inadmissible and should not have been considered by the judges).

Effects on Juries

Jonathan M. Golding & Jerry Hauselt, *When Instructions to Forget Become Instructions to Remember*, 20 PERSONALITY & SOC. PSYCHOL. BULL. 178 (1994) (explaining the irrational tendency to adhere to information, even if told to forget it and even if contradictory information is provided).

Christina C. Guenther, *Keep Your Bias to Yourself: How Deliberating with Differently Biased Others Affects Mock-Jurors' Guilt Decisions, Perceptions of the Defendant, Memories, and Evidence Interpretation*, 41 LAW & HUM. BEHAV. 478 (2017) (reporting results of experiment on how exposure to pre-trial publicity affects jury deliberations and decisions).

Kristyn A. Jones et al., *Objectivity Is a Myth for You but Not for Me or Police: A Bias Blind Spot for Viewing and Remembering Criminal Events*, 24 PSYCHOL. PUB. POL'Y & L. 259 (2018) (reporting results of a study finding that while people generally recognize that biases may influence an average person's assessment of a criminal event based on police body camera or surveillance footage, they tend to believe that biases will not affect their own assessments or those of police officers).

Nick D. Lange et al., *Contextual Biases in the Interpretation of Auditory Evidence*, 35 LAW. & HUM. BEHAV. 178 (2011) (reporting results of experiments showing how interpretations of audio recordings can be biased by the availability of transcripts and other contextual information).

Eyal Zamir et al., *Seeing Is Believing: The Anti-Inference Bias*, 89 IND. L.J. 195 (2014) (examining the reluctance to impose liability based on circumstantial evidence alone, even when the circumstantial evidence is more reliable than direct evidence).

Effects on Lawyers and Clients

Jill C. Anderson, *Misreading Like a Lawyer: Cognitive Bias in Statutory Interpretation*, 127 HARV. L. REV. 1521 (2014) (describ-

ing how lawyers fail to realize there are multiple ways that ambiguous statutory language could be read).

Cory S. Clements, Comment, *Perception and Persuasion in Legal Argumentation: Using Informal Fallacies and Cognitive Biases to Win the War of Words*, 2013 BYU L. REV. 319 (discussing the insights about legal argumentation that lawyers can draw from psychologists' research on cognitive biases and philosophers' understandings of logical fallacies).

Robert A. Creo, *Bias, Fallacies & Decision Errors – Processing Information: Sights, Sounds and Framing*, 32 ALTERNATIVES TO HIGH COST LITIG. 135 (2014) (advising mediators about how attorneys' and clients' decisions can be influenced by framing and other cognitive biases).

Robert A. Creo, *Bias, Fallacies & Decision Errors – Information*, 32 ALTERNATIVES TO HIGH COST LITIG. 108 (2014) (advising mediators about how the impact of irrational heuristics and biases in how people process information).

Brian P. Kane, *Are Cognitive Biases Impeding Your Legal Advice Under Rule 2.1?*, ADVOC. (Idaho), Oct. 2015, at 23 (encouraging lawyers to recognize the biases that affect their evaluation of legal issues, as well as the biases that affect their clients' evaluations of legal positions and options).

Michael Joyce & Elissa Wurf, *Influencing Clients: Biases, Behavior, and Building Rapport*, ESTATE PLAN., Aug. 2018, at 38 (advising estate planning attorneys on how to deal with the instinctual mental biases of clients).

Pamela Keller, *Accounting for Cognitive Bias in Legal Reasoning and Writing*, J. KAN. B. ASS'N, Sept. 2019, at 26 (providing advice on how to adjust the style and content of legal writing and advocacy to account for cognitive biases).

James H. Stark & Maxim Milyavsky, *Towards a Better Understanding of Lawyers' Judgmental Biases in Client Representation: The Role of Need for Cognitive Closure*, 59 WASH. U. J.L. & POL'Y 173 (2019) (reporting results of study of how differences in law students' need for cognitive closure – a desire for clear answers over ambiguity – affects their ability to predict judicial out-

comes and assess the fair settlement value of personal injury claims).

Marilyn R. Walter & Elizabeth Fajans, *The Impact of Cognitive Bias on Persuasion and Writing Strategies*, 22 J.L. & POL'Y 1 (2013) (introduction to a symposium encouraging lawyers to be aware of the cognitive biases and heuristics that come into play when recipients read legal documents).

Graham Ward, *Conflict Management by Managing Cognitive Biases*, MICH. B.J., Feb. 2019, at 32 (explaining how lawyers who understand cognitive biases can improve their ability to give advice about the generation of conflicts and how to resolve them).

Melanie D. Wilson, *Quieting Cognitive Bias with Standards for Witness Communications*, 62 HASTINGS L.J. 1227 (2011) (discussing how proposed standards on lawyer-witness communications could reduce the impact of unwanted cognitive biases).

Effects on Witnesses

Florina Altshiler, *Memory, Perception, and Confirmation Bias*, IN-HOUSE DEFENSE Q., Summer 2017, at 23 (discussing the psychology of flawed eyewitness testimony).

Amy V. Hall, *Which Self Should the Law Target? An Analysis of Behavioral Biases in Criminal-Punishment Regimes*, 98 TEX. L. REV. 163 (2019) (examining biases that affect decision making, particularly biases that affect the way people expect to experience an event, actually experience the event while it is happening, and remember experiencing the event afterward, and discussing the implications of these biases for the criminal justice system).

Bryan Scott Ryan, *Alleviating Own-Race Bias in Cross-Racial Identifications*, 8 WASH U. JURIS. REV. 115 (2015) (arguing that debiasing jury instructions should be given in cases involving cross-racial identifications because witnesses are worse at correctly identifying people of other races).

Foresight Bias

Sean B. Seymore, *Foresight Bias in Patent Law*, 90 NOTRE DAME L. REV. 1105 (2015) (proposing solutions for the problem of fore-

sight bias in patent law, which occurs when a decision maker lets over-pessimism and an oversimplified view of the future influence the patentability determination).

Negativity Bias

Kenneth D. Chestek, *Fear and Loathing in Persuasive Writing: An Empirical Study of the Effects of the Negativity Bias*, 14 LEG. COMM. & RHETORIC: JALWD 1 (2017) (reporting the results of an experimental study on how judges respond to negative or positive themes in written advocacy).

Kenneth D. Chestek, *Of Reptiles and Velcro: The Brain's Negativity Bias and Persuasion*, 15 NEV. L.J. 605 (2015) (exploring the cognitive psychology literature on negative bias and discussing its implications for lawyers seeking to persuade judges through written advocacy).

Optimism, Confirmation, and Causal Bias

Paul F. Campos, *Food Policy and Cognitive Bias*, 5 WAKE FOREST J.L. & POL'Y 187 (2015) (discussing how beliefs about food and health are affected by optimism, confirmation, and causal biases).

Educational Background Bias

Hillel Y. Levin & John W. Emerson, *Is There a Bias Against Education in the Jury Selection Process?*, 38 CONN. L. REV. 325 (2006) (asserting that there is no empirical basis for the contention that jurors tend to be below average in education).

Tawnee Sakima & Scott Schmidtke, *Implicit Biases and Hawai'i's Educational Landscape: An Empirical Investigation*, 37 U. HAW. L. REV. 501 (2015) (reporting results of empirical study in Hawai'i finding implicit bias favoring private high school graduates over public school graduates).

Emotional Bias

Anna Spain Bradley, *The Disruptive Neuroscience of Judicial Choice*, 9 UC IRVINE L. REV. 1 (2018) (drawing on neuroscien-

tific insights to explain how bias, emotion, and empathy influence judicial decisions).

Charles Elliott, *Juries, Sex, and Emotional Affect*, 35 *LAW & PSYCHOL. REV.* 37 (2011) (assessing whether criminal trial outcomes are affected by the gender of prosecuting attorneys delivering arguments with or without emotional content).

Ozkan Eren & Naci Mocan, *Emotional Judges and Unlucky Juveniles*, 10 *AM. ECON. J.: APPLIED ECON.* 171 (2018) (finding that judges impose harsher sentences in juvenile court proceedings during the week after unexpected losses by a prominent college football team in the state).

Shai Danziger et al., *Extraneous Factors in Judicial Decisions*, 108 *PROC. NAT'L ACAD. SCI.* 6889 (2011) (reporting results of study which found a connection between judges' parole decisions and the timing of judges' food breaks, suggesting that hungry judges may be less inclined to rule in favor of prisoners seeking parole).

Andreas Glöckner, *The Irrational Hungry Judge Effect Revisited: Simulations Reveal that the Magnitude of the Effect Is Overstated*, 11 *JUDGMENT & DECISION MAKING* 601 (2016) (suggesting that the supposed "irrational hungry judge effect" may actually be the result of other factors, such as a tendency for judges to handle easy matters first and then take up the most difficult and time consuming cases before a lunch or other break).

Explicit Bias

Jessica A. Clarke, *Explicit Bias*, 113 *Nw. U. L. REV.* 505 (2018) (arguing that courts in many discrimination cases have been surprisingly willing to ignore clear, explicit manifestations of bias).

Gender Bias

In Family Law Proceedings

Jed H. Abraham, *Why Men Fight for Their Kids: How Bias in the System Puts Dads at a Disadvantage*, *FAM. ADVOC.*, Summer 1994, at 48 (discussing how American courts in child custody cases once had a patriarchal approach, then shifted to a prefer-

ence for maternal custody, and then moved to a joint custody model, and considering how attitudes of judges, attorneys, and parents evolved over time).

Jennifer Bennett Shinall, *Settling in the Shadow of Sex: Gender Bias in Marital Asset Division*, 40 CARDOZO L. REV. 1857 (2019) (arguing that gender bias harms women in divorce proceedings, including bias of judges, mediators, lawyers, and litigants).

Rita Berg, *Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts*, 29 LAW & INEQUALITY 5 (2011) (tracing the implications of parental alienation analysis in the Minnesota legal system and finding that it may unfairly prevent mothers from obtaining custody of their children).

Erin N. Birt & Elizabeth J. Chacko, *The Changing Role of the Tender Years Doctrine: Gender Bias, Parenthood, and Illinois Law*, DCBA BRIEF, NOV. 2013, at 26 (describing how changing attitudes toward gender and nontraditional families led to the rejection of the tender years doctrine favoring mothers over fathers as the preferred caretakers for young children).

Leslie A. Cadwell, Note, *Gender Bias Against Fathers in Custody? The Important Difference Between Outcome and Process*, 18 VT. L. REV. 215 (1993) (discussing perceptions about gender bias against divorcing fathers in Vermont custody cases).

Krista Carpenter, Comment, *Why Are Mothers Still Losing: An Analysis of Gender Bias in Child Custody Determinations*, 1996 DET. C.L. MICH. ST. U. L. REV. 33 (exploring how gender bias works against mothers in child custody determinations, with a focus on cases in Michigan).

Karen Czapanskiy, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, FAM. ADVOC., Summer 1993, at 247 (reviewing studies on gender bias in state courts, with a focus on how gender bias affects the treatment of domestic violence in family law disputes).

Lynn M. Curtis, *Sexism and Bias in the Name of Tradition: Missouri's Standard of Inequality Regarding Children's Surnames*, 66 UMKC L. REV. 169 (1997) (discussing Missouri decisions about changing a minor's surname and how the practice of naming reflects gender traditions that subjugate women).

Douglas Dotterweich & Michael McKinney, *National Attitudes Regarding Gender Bias in Child Custody Cases*, 38 *FAM. & CONCILIATION CTs. REV.* 208 (2000) (reporting results of survey of four thousand attorneys and judges, finding that most attorneys, especially male attorneys, believe that mothers continue to be favored over fathers in child custody cases, but judges generally do not feel that gender of the parent is a significant factor in making custody awards).

Nancy E. Dowd, Book Review, 28 *FAM. L.Q.* 163 (1994) (reviewing *FAMILY LAW & GENDER BIAS: COMPARATIVE PERSPECTIVES* (Barbara Stark ed., 1992)).

Lorena Espino-Piepp, Note, *The Violence Against Women Act, Implicit Bias, and Judicial Training*, 24 *CARDOZO J. EQUAL RTS. & SOC. JUST.* 347 (2018) (arguing that family court judges and staff should be required to have training about implicit bias based on racial stereotyping of domestic violence survivors).

Kathy T. Graham, *How the ALI Child Custody Principles Help Eliminate Gender and Sexual Orientation Bias from Child Custody Determinations*, 8 *DUKE J. GENDER L. & POL'Y* 323 (2001) (considering the changes proposed in the American Law Institute's Principles of the Law of Family Dissolution and the effects they will have on child custody law).

Jennifer J. Harman et al., *Parents Behaving Badly: Gender Biases in the Perception of Parental Alienating Behaviors*, 30 *J. FAM. PSYCHOL.* 866 (2016) (reporting the results of a survey on how people perceive mothers' and fathers' behaviors that support or discourage a positive relationship with the other parent, which found that parental alienating behaviors are considered more acceptable for mothers than for fathers).

Robert W. Hinds & E. Ruth Bradshaw, *Gender Bias in Lawyers' Affidavits to the Family Court of Australia*, 43 *FAM. CT. REV.* 445 (2005) (reporting the results of a study of contents of lawyers' affidavit material presented to an Australian family court in custody and visitation cases, which found that the lawyer's gender affected the nature, length, and emotional content of arguments to the court, especially in cases involving domestic violence).

Susan Beth Jacobs, Note & Comment, *The Hidden Gender Bias Behind “The Best Interest of the Child” Standard in Custody Decisions*, 13 GA. ST. U. L. REV. 845 (1997) (considering how the threat of hidden gender bias may lurk beneath the “best interest of the child” standard in child custody cases).

Lawrence W. Kaplan, *When the Court Compounds the Problem: How to Cope with Bias from the Bench*, FAM. ADVOC., Summer 1994, at 61 (discussing how to handle gender bias in family court cases, including situations where attorneys attempt to exploit attitudes toward gender and situations where judges exhibit gender bias).

Ira H. Lurvey, *Bias: The Commodity of the World*, FAM. ADVOC., Summer 1994, at 7 (discussing how courts addressed gender bias in Pennsylvania cases about enforcement of premarital agreements).

Megan G. Mayer, *In re Marriage of Iverson: Dubious Benefits in Reducing Judicial Gender Bias*, 3 UCLA WOMEN’S L.J. 105 (1993) (analyzing the judicial gender bias against a female plaintiff in a California case regarding the validity of a premarital agreement).

Cynthia A. McNelly, Comment, *Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court*, 25 FLA. ST. U. L. REV. 891 (1998) (discussing the role of gender stereotypes in family law and recommending ways to provide for the best interests of children by rectifying disparate treatment of fathers in family court and of mothers in the workplace).

Andrea L. Miller, *Expertise Fails to Attenuate Gendered Biases in Judicial Decision-Making*, 10 SOC. PSYCHOL. & PERSONALITY SCI. 227 (2019) (reporting the results of a study of trial court judges in cases about child custody and workplace discrimination relating to family caregiving duties, which found that judges are just as likely as laypeople to discriminate on the basis of personal ideas about gender roles).

Carolyn F. Moore, *Gender Bias in Protective Orders Nipped in the Bud*, 65 TEX. B.J. 454 (2002) (explaining how a proposed change to Texas rules on unauthorized practice of law, allowing nonlawyers and certain nonprofit organizations to provide legal

advice or representation to protective order applicants, would have a disproportionate adverse impact on women because most applicants for such orders are women).

Craig Nickerson, Comment, *Gender Bias in a Florida Court: "Mr. Mom" v. "The Poster Girl for Working Mothers,"* 37 CAL. W. L. REV. 185 (2000) (assessing gender bias in a Florida child custody case).

Lynn Hecht Schafran, *Gender Bias in Family Courts: Why Prejudice Permeates the Process*, FAM. ADVOC., Summer 1994, at 22 (discussing how family law is a particularly serious problem in family law cases because all participants bring to the process their own family experiences and because many judges dislike the field of family law and are burned out by its emotionally draining nature).

William C. Smith, *Dads Want Their Day: Fathers Charge Legal Bias Toward Moms Hamstrings Them as Full-Time Parents*, ABA J., Feb. 2003, at 38 (describing the fathers' rights movement and its contentions that family law and family courts are biased in favor of women).

Sheila Prell Sonenshine, *Addressing Bias at the Appellate Level*, FAM. ADVOC., Summer 1994, at 66 (considering how gender stereotypes affect the family law appellate process).

Michele N. Struffolino, *The Devil You Don't Know: Implicit Bias Keeps Women in Their Place*, 38 PACE L. REV. 260 (2018) (examining ways to prevent implicit gender bias from adversely affecting decision making in the family law system).

Dennis G. Vatsis, *Throwaway Dads*, MICH. B.J., Sept. 2001, at 55 (discussing gender bias against fathers in Michigan's child custody determinations).

Alexa Welzien, Note & Comment, *Life, Liberty, and the Pursuit of Parental Equality: Florida's New Parenting Plan Remains Overshadowed by Lingering Gender Bias*, 33 NOVA L. REV. 509 (2009) (arguing that a new Florida statute on child custody determinations perpetuates bias against fathers based on conventional gender norms about child rearing).

In Other Areas of Law

Jaclyn Alcantara, Comment, *The Impact of Implicit Bias on Female Patent Applicants in an Age of Increasingly Vague Patent Standards*, 88 UMKC L. REV. 161 (2019) (exploring how the implicit gender biases of patent examiners may impact patent applications for inventors who are women).

Alnisa Bell, *Litigating Implicit Bias Cases in the #MeToo Era*, N.J. LAW., Oct. 2019, at 20 (discussing the admissibility of evidence about implicit bias in Title VII cases).

Stephen Benard et al., *Cognitive Bias and the Motherhood Penalty*, 59 HASTINGS L.J. 1359 (2008) (assessing the evidence that implicit biases reduce wages for working mothers).

Chris Chambers Goodman, *Nevertheless She Persisted: From Mrs. Bradwell to Annalise Keating, Gender Bias in the Courtroom*, 24 WM. & MARY J. WOMEN & L. 167 (2017) (discussing the evolution of gender bias against female attorneys and the manifestation of gender bias in courtrooms).

Melinda Cleary, Comment, *Mothering Under the Microscope: Gender Bias in Law and Medicine and the Problem of Munchausen Syndrome by Proxy*, 7 T.M. COOLEY J. PRAC. & CLINICAL L. 183 (2005) (arguing that legal consideration of Munchausen Syndrome by Proxy disorder has been tainted by cultural, legal, and medical stereotypes about women and motherhood).

Phyliss Craig-Taylor, *Lifting the Veil: The Intersectionality of Ethics, Culture, and Gender Bias in Domestic Violence Cases*, 32 RUTGERS L. REC. 31 (2008) (recommending steps to improve the provision of competent representation in domestic violence cases).

Danielle De Smeth, *The Brock Turner Sentencing and the Face of Bias*, ORANGE CTY. LAW., Oct. 2016, at 54 (discussing California Women Lawyers' request that all California judges receive implicit bias training regarding sexual assault, domestic violence, and human trafficking).

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Katherine E. Leung, Note, *Microaggressions and Sexual Harassment: How the Severe or Pervasive Standard Fails Women of Color*, 23 *TEX. J. C.L. & C.R.* 79 (2017) (arguing that the widespread and significant impact of microaggressions makes it essential to rethink anti-discrimination law and stop treating race discrimination and sex discrimination as separate problems).

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Mary Newman, Comment, *Barnes v. City of Cincinnati: Command Presence, Gender Bias, and Problems of Police Aggression*, 29 HARV. J.L. & GENDER 485 (2006) (examining an Ohio case about a police officer denied promotion for lacking "command presence" and failure to appear sufficiently masculine).

Catherine Ross Dunham, *Third Generation Discrimination: The Ripple Effects of Gender Bias in the Workplace*, 51 AKRON L. REV. 55 (2017) (arguing that implicit gender bias against female litigants in employment discrimination cases adds an additional

layer of discrimination on top of the underlying events that gave rise to the litigants' claims).

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Debbie Thomas, *Bias in the Boardroom: Implicit Bias in the Selection and Treatment of Women Directors*, 102 MARQ. L. REV. 539 (2018) (proposing reforms to address implicit gender bias facing women directors on corporate boards).

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Ruqaiyah Yearby, *Internalized Oppression: The Impact of Gender and Racial Bias in Employment on the Health Status of Women of Color*, 49 SETON HALL L. REV. 1037 (2019) (explaining how gender and racial bias in employment adversely affect the health of women of color).

Immigration Status Bias

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Nicole Davis et al., *A Question of Excluding Immigration Status in Civil Court: Why Torres Got It Right*, 45 N.M. L. REV. 711 (2015) (reviewing a New Mexico court's ruling that immigration status is irrelevant to the calculation of damages for wrongful death, and arguing that evidence of immigration status generally should be excluded in civil litigation).

David Holland & Gil Lenz, *Exposing Immigration Bias During Voir Dire*, ILL. B.J., Feb. 2011, at 82 (arguing that courts should allow prospective jurors to be questioned about anti-immigrant bias).

Caleb E. Mason, *The Use of Immigration Status in Cross-Examination of Witnesses: Scope, Limits, Objections*, 33 AM. J. TRIAL ADVOC. 549 (2010) (advising lawyers about the extent to which immigration status is a proper subject of cross-examination).

Implicit Bias

Basic Overviews

Isabel Bilotta et al., *How Subtle Bias Infects the Law*, 15 ANN. REV. L. & SOC. SCI. 227 (2019) (describing the ways in which subtle and unconscious prejudices give rise to critical problems throughout the legal system).

Gregory S. Cusimano, *Implicit Unconscious Bias*, 79 ALA. LAW. 418 (2018) (discussing the effects of implicit bias, particularly in litigation).

Bernice B. Donald & Sarah Redfield, *Arcing Toward Justice: Can Understanding Implicit Bias Help Change the Path of Criminal Justice?*, CRIM. JUST., Summer 2019, at 18 (providing an overview of implicit bias issues in the legal field).

Alfred Ray English, *Understanding Implicit Bias*, ARIZ. ATT'Y, Mar. 2019, at 10 (providing an overview of implicit bias and its effects in law).

Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945 (2006) (reviewing the science of implicit bias).

Gregory Mitchell, *An Implicit Bias Primer*, 25 VA. J. SOC. POL'Y & L. 27 (2018) (answering basic conceptual and empirical questions about implicit bias).

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Yvonne Elosiebo, *Implicit Bias and Equal Protection: A Paradigm Shift*, 42 N.Y.U. REV. L. & SOC. CHANGE 451 (2018) (arguing that the Supreme Court should adopt a new Equal Protection standard, allowing claims based on findings of discriminatory negligence rather than just discriminatory intent).

Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (introducing the idea that anti-discrimination law should take into account unconscious bias as well as intentional, conscious forms of discrimination).

Charles R. Lawrence III, *Local Kine Implicit Bias: Unconscious Racism Revisited (Yet Again)*, 37 U. HAW. L. REV. 457 (2015) (offering three texts or stories about implicit bias to show how racism, sexism, and homophobia might be understood as a disease infecting a community, rather than as a collection of acts by individuals).

Critiques of the Focus on Implicit Bias

Samuel R. Bagenstos, *Implicit Bias's Failure*, 39 BERKELEY J. EMP. & LAB. L. 37 (2018) (arguing that implicit bias research has not achieved its goals of depoliticizing and depersonalizing racial issues and may have undermined efforts to address racial inequality).

Ralph Banks et al., *(How) Does Unconscious Bias Matter? Law, Politics, and Racial Inequality*, 58 EMORY L.J. 1053 (2009) (warn-

ing that concerns about implicit bias may draw attention away from more productive types of anti-discrimination reform).

Erik J. Girvan, *On Using the Psychological Science of Implicit Bias to Advance Anti-Discrimination Law*, 26 GEO. MASON U. C.R. L.J. 1 (2015) (discussing why implicit bias research has not been more effective in shaping how the law treats discrimination).

Jonathan Kahn, *Pills for Prejudice: Implicit Bias and Technical Fix for Racism*, 43 AM. J. L. & MED. 263 (2017) (questioning the trend toward the idea of physically locating manifestations of racism in the brain, which can reduce racism to a decontextualized physiological condition that obscures understandings of its social and historical nature).

Jerry Kang, *Implicit Bias and the Pushback from the Left*, 54 ST. LOUIS U. L.J. 1139 (2010) (observing that the political Left, as well as the Right, has deep concerns about relying on understandings of human decision making and behavior informed by new findings in the mind sciences).

Jerry Kang & Kristine Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465 (2010) (responding to major criticisms of implicit bias theory).

Benjamin Mitchell-Yellin, *In Defense of Implicit Bias*, PSYCHOL. TODAY, Mar. 19, 2018 (discussing recent criticisms of implicit bias testing, including its low reliability and inability to predict behavior).

Keith Payne et al., *How to Think About "Implicit Bias,"* SCI. AM., Mar. 27, 2018 (discussing why some people on the political left and right are critical of implicit bias studies).

Michael Selmi, *The Paradox of Implicit Bias and a Plea for a New Narrative*, 50 ARIZ. ST. L.J. 193 (2018) (arguing that too much emphasis has been put on implicit bias, because characterizing discrimination as implicit and unconscious puts it beyond legal reach, and most of what is treated as implicit bias could just as easily be defined as explicit or conscious bias).

Philip E. Tetlock et al., *Detecting and Punishing Unconscious Bias*, 42 J. LEGAL. STUD. 83 (2013) (presenting experimental re-

sults about how liberals and conservatives disagree about the value of technology used to detect implicit biases).

Tryon P. Woods, *The Implicit Bias of Implicit Bias Theory*, 10 DREXEL L. REV. 631 (2018) (exploring implicit bias theory's underlying assumptions and arguing that the focus on implicit bias reveals the ongoing hegemony of liberalism and colorblindness ideology).

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Erik J. Girvan et al., *The Generalizability of Gender Bias: Testing the Effects of Contextual, Explicit, and Implicit Sexism on Labor Arbitration Decisions*, 39 LAW. & HUM. BEHAV. 525 (2015) (reporting results of experimental studies on whether the gender of the employee-grievants affects decisions by professional arbitrators).

Leigh Goodmark, *Alternative Dispute Resolution and the Potential for Gender Bias*, JUDGES' J., Spring 2000, at 21 (looking at the potential for gender bias in alternative dispute resolution, focusing on mediation of child support and custody cases).

Elayne E. Greenberg, *Fitting the Forum to the Pernicious Fuss: A Dispute System Design to Address Implicit Bias and 'Isms in the Workplace*, 17 CARDOZO J. CONFLICT RESOL. 75 (2015) (proposing a reconciliation-focused system for handling employee claims about workplace discrimination caused by implicit biases).

Carol Izumi, *Implicit Bias and Prejudice in Mediation*, 70 SMU L. REV. 681 (2017) (discussing how implicit bias can undermine

mediators' best efforts to achieve neutrality and suggesting bias reduction strategies to mitigate prejudice in mediation).

Carol Izumi, *Implicit Bias and the Illusion of Mediator Neutrality*, 34 WASH. U. J.L. & POL'Y 71 (2010) (considering how the behavioral realities of mediators' thought processes, actions, motivations, and decisions undermine the ideal of mediator neutrality).

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Sergio Puig & Anton Strezhnev, *Affiliation Bias in Arbitration: An Experimental Approach*, 46 J. LEGAL. STUD. 371 (2017) (reporting the results of an experimental survey about how professional arbitrators have a cognitive predisposition to favor the party that appointed them).

Effects on Employment

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Ashley Lattal, *The Hidden World of Unconscious Bias and Its Impact on the "Neutral" Workplace Investigator*, 24 J.L. & POL'Y 411 (2016) (proposing solutions to the problem of implicit biases in workplace investigations).

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Camille A. Olson et al., *Implicit Bias Theory in Employment Litigation*, PRACTICAL LAW., Oct. 2017, at 37 (discussing the extent to which courts have embraced or rejected implicit bias theory in employment cases).

Crystal Powell, Comment, *Bias, Employment Discrimination, and Black Women's Hair: Another Way Forward*, 2018 BYU L. REV. 933 (exploring the history of bias and stereotyping surrounding Black women's hair and analyzing court decisions about employment discrimination claims).

Victor D. Quintanilla & Cheryl R. Kaiser, *The Same-Actor Inference of Nondiscrimination: Moral Credentialing and the Psychological and Legal Licensing of Bias*, 104 CAL. L. REV. 1 (2016) (arguing that evidence from psychological science show it is unreliable to presume there is no discrimination when the same person hires an employee and then fires that employee within a relatively short time span).

Brian Sanford, *Attitude Adjustment*, 81 TEX. B.J. 848 (2018) (discussing implicit bias and ways to minimize its effects in hiring decisions).

David D. Savage & Richard Bales, *Video Games in Job Interviews: Using Algorithms to Minimize Discrimination and Unconscious Bias*, 32 ABA J. LAB. & EMP. L. 211 (2017) (discussing the debate over whether algorithms and their use in video games used to evaluate potential employees leads to disparate treatment and disparate impact age discrimination).

Effects on Experts

L.C. Alewijnse et al., *Minimizing Bias in Forensic Handwriting Examinations*, 25 J. FORENSIC DOCUMENT EXAMINATION 17 (2015) (suggesting ways to minimize the risk of biases in forensic handwriting examination, such as confirmation bias, selection bias, and contextual bias).

David E. Bernstein, *Expert Witnesses, Adversarial Bias, and the (Partial) Failure of the Daubert Revolution*, 93 IOWA L. REV. 451 (2007) (describing problems with adversarial bias in forensic science and proposing that courts appoint nonpartisan experts).

Tarika Daftary-Kapur, *Gender-Intrusive Questioning: A Survey of Expert Witnesses*, 32 BEHAVIORAL SCI. & L. 180 (2014) (reporting the results of a survey on the extent to which gender bias diminishes the credibility of female experts).

Itiel E. Dror et al., *Cognitive Bias and Its Impact on Expert Witnesses and the Court*, JUDGES' J., Fall 2015, at 8 (reviewing scientific findings about how expert witnesses are inevitably influenced by factors unrelated to the data relevant to the formation of their expert conclusions).

Itiel E. Dror et al., *The Emergence of Cognitive Bias in Forensic Science and Criminal Investigations*, 4 BRIT. J. AM. LEGAL. STUD. 527 (2015) (discussing how forensic science is vulnerable to cognitive bias problems and the importance of recognizing biases that may affect analysis).

John F. Edens et al., "Hired Guns," "Charlatans," and Their "Voodoo Psychobabble": Case Law References to Various Forms of Perceived Bias Among Mental Health Expert Witnesses, 9 PSYCHOL. SERV. 259 (2012) (reviewing court opinions about alleged bias of mental health expert witnesses).

Kevin W. Eva, *Putting Bias into Context: The Role of Familiarity in Identification*, 40 LAW. & HUM. BEHAV. 50 (2016) (reporting results of an experiment looking at how the case information available to a forensic expert influences forensic fingerprint comparison accuracy and biases the likelihood of an expert finding a match).

Chulyoung Kim, *Adversarial Bias, Litigation, and the Daubert Test: An Economic Approach*, 47 INT'L REV. L. & ECON. 67 (2016) (discussing the conditions under which expert witnesses' analysis may not be tainted by adversarial bias, because litigants may have incentives to present truly neutral expert testimony in some litigation environments).

Nina MacLean et al., *Forensic Clinicians' Understanding of Bias*, 25 PSYCHOL. PUB. POL'Y & L. 323 (2019) (reporting results of a national survey of licensed psychologists with forensic interests, which assessed how familiar they are with cognitive biases and debiasing strategies).

Douglas Mossman, *When Forensic Examiners Disagree: Bias, or Just Inaccuracy?*, 19 *PSYCHOL., PUB. POL'Y, & L.* 40 (2013) (reporting results of a study finding that many instances of disagreement among forensic psychiatric examiners might be attributable to imperfect accuracy that produces random errors, rather than to examiner biases).

Daniel Murrie et al., *Are Forensic Experts Biased by the Side that Retained Them?*, *PSYCHOL. SCI.* (2013) (reporting the results of an experiment which found that psychologists and psychiatrists who evaluated offender case files and believed they were hired by the prosecution gave higher risk scores to offenders than those who believed they were consulting for the defense).

Tess M. S. Neal, *Are Forensic Experts Already Biased Before Adversarial Legal Parties Hire Them?*, *PLoS ONE*, Apr. 28, 2016 (reporting the results of a survey finding that forensic psychologists' attitudes toward the death penalty influence their willingness to work on capital cases).

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Dana E. Prescott & Diane A. Tennies, *Bias Is a Reciprocal Relationship: Forensic Mental Health Professionals and Lawyers in the Family Court Bottle*, 31 *J. AM. ACAD. MATRIM. LAW.* 427 (2019) (discussing the effects of explicit and implicit bias on lawyers and forensic mental health experts in family court cases, in-

cluding the role that gender plays in the selection and impact of such experts).

Marilyn Price, *Gender Differences in the Practice Patterns of Forensic Psychiatry Experts*, 32 J. AM. ACAD. PSYCHIATRY & L. ONLINE 250 (2004) (reporting the results of a survey about whether gender is a significant factor affecting the work of forensic psychiatry experts).

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Patricia A. Zapf et al., *Cognitive Bias in Forensic Mental Health Assessment: Evaluator Beliefs About Its Nature and Scope*, 24 PSYCHOL. PUB. POL'Y & L. 1 (2018) (reporting the results of a survey of mental health professionals who conduct forensic evaluations for courts, finding that they generally are concerned about cognitive biases but overestimate their ability to set aside such biases).

Effects on Judges

Asha Amin, Note, *Implicit Bias in the Courtroom and the Need for Reform*, 30 GEO. J. LEG. ETHICS 575 (2017) (discussing the prevalence of implicit bias and how its effects can be controlled).

Melissa L. Breger, *Making the Invisible Visible: Exploring Implicit Bias, Judicial Diversity, and the Bench Trial*, 53 U. RICH. L. REV. 1039 (2019) (exploring how diversifying the trial court judiciary may reduce implicit bias in judicial decision making).

Bruce A. Green, *Legal Discourse and Racial Justice: The Urge to Cry "Bias!"*, 28 GEO. L.J. 177 (2015) (considering whether it is unprofessional and unproductive to accuse judges of bias and suggesting that implicit bias in judging may be better discussed in the abstract or in the aggregate than in the context of particular judicial decisions).

Jerry Kang, et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2011) (discussing the growing scientific literature on implicit bias, examining how implicit bias affects a criminal case

and a civil employment discrimination case, and suggesting intervention strategies to counter the effects of implicit biases).

Zhuang Liu, *Does Reason Writing Reduce Decision Bias? Experimental Evidence from Judges in China*, 47 *J. LEGAL. STUD.* 83 (2018) (reporting the results of experiments on Chinese judges to test whether requiring judges to write their reasons for decisions reduces the extent to which the judges' subjective feelings about the litigants influences their judgments).

Kathleen Mahoney, *Judicial Bias: The Ongoing Challenge*, 2015 *J. DISP. RESOL.* 43 (calling for a renewed commitment to judicial education on how gender, race, class, and other biases can affect judicial decisions and impartiality).

Dana Lee Marks, *Who, Me? Am I Guilty of Implicit Bias?*, *JUDGES' J.*, Fall 2015, at 20 (advising judges on how to recognize and mitigate the effect of implicit biases).

Oren Perez, *Judicial Strategies for Reviewing Conflicting Expert Evidence: Biases, Heuristics, and Higher-Order Evidence*, 64 *AM. J. COMP. L.* 75 (2016) (reporting results of an empirical study of Israeli judges in torts cases, providing support for the view that judges rely on a variety of biases and heuristics in dealing with conflicting expert evidence rather than relying entirely on in-depth analysis of the evidence).

Masua Sagiv, *Cultural Bias in Judicial Decision Making*, 35 *B.C. J.L. & SOC. CHANGE* 229 (2015) (discussing the use of cultural experts in American and Israeli legal proceedings and suggesting ways for judges to recognize and mitigate cultural biases).

Elizabeth G. Thornburg, *(Un)Conscious Judging*, 76 *WASH. & LEE L. REV.* 1567 (2019) (analyzing cases in which trial and appellate judges drew different inferences from the same record and discussing the role of judges' implicit bias, flawed reasoning, and culturally influenced perceptions).

Effects on Jurors

Mark W. Bennett, *Introduction to Implicit (Unconscious) Bias*, *ADVOCATE*, Winter 2019, at 35 (essay on implicit bias by the first judge to develop, vet, and use an implicit bias jury instruction in civil and criminal cases).

Patrick C. Brayer, *Hidden Racial Bias: Why We Need to Talk with Jurors About Ferguson*, 109 NW. U. L. REV. ONLINE 163 (2015) (arguing that racial issues should be openly addressed during jury selection).

Sarah Jane Forman, *The #Ferguson Effect: Opening the Pandora's Box of Implicit Racial Bias in Jury Selection*, 109 NW. U. L. REV. ONLINE 171 (2015) (discussing how implicit bias affects voir dire and offering personal anecdotes about experiences as a public defender).

Dov Fox, *Neuro-Voir Dire and the Architecture of Bias*, 65 HASTINGS L.J. 999 (2014) (proposing a categorization, based on the neuroscience of bias, of several types of juror bias and arguing that trial courts should limit interrogation and disqualification of potential jurors to the type of bias that involves personal interests in the case).

Joanna Fox, *Voir Dire and Implicit Bias in the Federal Courts*, FED. LAW., July/Aug. 2019, at 6 (reviewing recent podcasts about how to use voir dire to detect and combat jurors' implicit biases).

Elizabeth Ingriselli, Note, *Mitigating Jurors' Racial Biases: The Effects of Content and Timing of Jury Instructions*, 124 YALE L.J. 1690 (2015) (reporting the results of an experiment finding that debiasing jury instructions given before the presentation of evidence result in lower judgments of guilt than post-evidence instructions).

Sharon Price-Cates, *Implicit Bias*, N.J. LAW., Aug. 2018, at 65 (assessing the effectiveness of jury instructions on implicit bias).

Anona Su, *A Proposal to Properly Address Implicit Bias in the Jury*, 31 HASTINGS WOMEN'S L.J. 79 (2020) (proposing a methodology for courts to inform jurors about implicit bias).

Mikah K. Thompson, *Bias on Trial: Toward an Open Discussion of Racial Stereotypes in the Courtroom*, 2018 MICH. ST. L. REV. 1243 (proposing ways to address racial bias of jurors by improving voir dire and jury instructions).

David Yokum et al., *The Inability to Self-Diagnose Bias*, 96 DENVER L. REV. 869 (2019) (reporting the results of an experimental study finding that jurors do not accurately assess whether their

exposure to a prejudicial news article about a litigant would affect their ability to be impartial in deciding a case).

Effects on Law Professors and Librarians

Lorraine Bannai & Anne Enquist, *(Un)examined Assumptions and (Un)intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1 (2003) (discussing how law school, particularly legal writing courses, can address cultural bias and its effects on legal analysis and language).

Michele Benedetto Neitz, *Pulling Back the Curtain: Implicit Bias in the Law School Dean Search Process*, 49 SETON HALL L. REV. 629 (2019) (considering ways in which implicit racial, gender, socioeconomic, and sexual orientation biases can arise in dean search processes).

Meera E. Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7 (2015) (proposing that law schools should do away with student evaluations or modify or supplement them with more rigorous and less discriminatory forms of evaluation).

Maurice R. Dyson, *Still Using the Wrong Yardstick: Measuring Quality by the Proxies of Bias, Conformity, and Rumor*, 31 COLUM. J. GENDER & L. 154 (2015) (discussing the problem of implicit gender bias and ill-advised ways of measuring achievement that perpetuate discrimination in legal academia).

Michael J. Higdon, *Beyond the Metatheoretical: Implicit Bias in Law Review Article Selection*, 51 WAKE FOREST L. REV. 339 (2016) (discussing how implicit biases affect the process of selecting articles for publication in law reviews).

Gregory S. Parks, *Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations*, 51 U.C. DAVIS L. REV. 1039 (2018) (exploring how implicit biases among law students influence how they perceive and evaluate law faculty).

Roger W. Reinsch et al., *Student Evaluations and the Problem of Implicit Bias*, 45 J.C. & U.L. 114 (2018) (addressing the implicit bias problems with using student evaluations to make employment decisions about faculty).

Nantiya Ruan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 HASTINGS WOMEN'S L.J. 3 (2020) (examining the hierarchical structure and power dynamics within law schools, particularly the treatment of legal skills faculty).

Catharine Wells, *Microaggressions: What They Are and Why They Matter*, 24 TEX. HISP. J.L. & POL'Y 61 (2017) (discussing the problem of microaggressions in law school life).

Catharine Wells, *Microaggressions in the Context of Academic Communities*, 12 SEATTLE J. SOC. JUST. 319 (2013) (describing the harm caused by microaggressions in academic settings).

Ronald Wheeler, *We All Do It: Unconscious Behavior, Bias, and Diversity*, 107 LAW. LIBR. J. 325 (2015) (suggesting steps that law librarians can take to overcome implicit bias and foster diversity in the workplace).

Albert H. Yoon, *Editorial Bias in Legal Academia*, 5 J. LEG. ANALYSIS 309 (2013) (reporting the results of a study finding that law journals have a bias toward publishing articles by their school's own faculty, even when those articles are lower in quality as measured by citation counts).

Effects on Lawyers

S. Grace Acosta, *Implicit Bias in Attorney Evaluation of Judges and Why It Applies to Everyone, Even You*, UTAH B.J., July/Aug. 2019, at 18 (discussing how implicit bias impacts attorneys' evaluations of judicial performance).

Ashely Badesch, *Lady Justice: The Ethical Considerations and Impacts of Gender-Bias and Sexual Harassment in the Legal Profession on Equal Access to Justice for Women*, 31 GEO. J. LEGAL ETHICS 497 (2018) (discussing the American Bar Association's adoption of Model Rule 8.4(g), prohibiting lawyers from engaging in harassment or discrimination in conduct relating to the practice of law).

Yasir Billoo, *Implicit Bias and Its Application in the Life of a Lawyer*, FLA. B.J., Apr. 2019, at 10 (considering the importance of lawyers becoming aware of their implicit biases).

Philip Bogdanoff, *Me Too: Eliminating Sexual Bias and Harassment at Your Law Firm*, ME. B.J., Fall/Winter 2018, at 22 (advising lawyers on steps they can take to prevent sexual harassment and bias in the legal profession).

Chris Chambers Goodman, *Shadowing the Bar: Attorneys' Own Implicit Bias*, 28 BERK. LA RAZA L.J. 18 (2018) (analyzing how attorneys' implicit biases impact litigants).

George C. Chen, *Beneath the Surface: Why Diversity and Inclusion Matter for Lawyers of Color, and What Lawyers Can Do to Address Implicit Bias in the Legal Profession*, FED. LAW., June 2015, at 28 (discussing problems with implicit racial bias among lawyers).

Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 N.Y.U. REV. L. & SOC. CHANGE 367 (2017) (discussing the inadequate treatment of cultural bias in legal education and in ethical codes for lawyers).

Tenielle Fordyce-Ruff, *Fairness, Clarity, Precision, and Reaction: Gender-Free and Bias-Free Word Choice*, ADVOC. (Idaho), Aug. 2015, at 52 (advising lawyers on how to avoid biased language in legal writing).

Caleb J. Fountain, *Client Perjury, Implicit Bias, and the Problem of Actual Knowledge*, 30 NOTRE DAME J.L. ETHICS & PUB. POL'Y 49 (2016) (contending that implicit biases affect lawyers' judgments about whether their clients are committing perjury, and therefore rules of legal ethics should be interpreted as requiring an attorney to have proof beyond a reasonable doubt that a client is lying before the attorney has an ethical obligation to take remedial measures).

Clark Freshman et al., *Mindful "Judging" 1.5: The Science of Attention, "Lie Detection," and Bias Reduction*, 2016 J. DISPUTE RESOL. 281 (discussing how mindfulness practices can reduce bias).

Thomas C. Grella, *Implicit Bias: A Hidden Obstacle to Exemplary Firm Culture*, LAW. PRAC., May/June 2019, at 62 (proposing ways for leaders of law firms to prevent implicit bias from harming organizational culture).

Claire P. Gutekunst, *Illuminating and Eliminating Bias Against Women*, N.Y. ST. B.J. Mar./Apr. 2017, at 5 (discussing state bar efforts to overcome implicit gender bias in legal workplaces).

Michael B. Hyman, *Reining in Implicit Bias*, ILL. B.J., July 2017, at 26 (discussing implicit bias and how lawyers can understand and reduce its effects).

Kathleen Nalty, *Strategies for Confronting Unconscious Bias*, FED. LAW., Jan./Feb. 2017, at 26 (discussing ways for lawyers to recognize unconscious biases and address them).

Bryan Neft, *Anecdotes Drive Home the Need for Anti-Bias Training*, LAW. J. (Allegheny County Bar Association), Oct. 26, 2018, at 3 (discussing how frequently lawyers are prejudged based on characteristics like physical appearance, gender, race, age, and sexual orientation).

Nicole E. Negowetti, *Implicit Bias and the Legal Profession's "Diversity Crisis": A Call for Self-Reflection*, 15 NEV. L.J. 930 (2015) (applying social science insights about implicit bias in examining diversity issues within the legal profession).

Nicole E. Negowetti, *Navigating the Pitfalls of Implicit Bias: A Cognitive Science Primer for Civil Litigators*, 4 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 278 (2014) (examining how scientific insights about implicit biases should inform how attorneys handle their representation of clients in civil litigation).

Alison M. Nelson, *Spotlight on Bias*, ADVOC. (Idaho State Bar), Feb. 2019, at 31 (discussing how gender bias affects women in the legal profession).

Kristen L. Palacio, *What Does Gender Bias Look Like in Real Life?*, FLA. B.J., Apr. 2019, at 12 (describing the impact of gender bias on women lawyers).

Russell G. Pearce et al., *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 FORDHAM L. REV. 2407 (2015) (arguing that a bias awareness approach would be more effective than a difference blindness approach in promoting diversity and equality of opportunity in large law firms).

Laurence F. Pulgram, *Owning Up to My Bias. . . And Steps Toward Making Change*, *LITIG.*, Winter 2017, at 4 (discussing the benefits for lawyers who can become aware of the unconscious biases that cloud their perception).

Cheyne R. Scott, *The Evolution of Diversity Training and Impact of Unconscious Bias on the Legal Profession*, *N.J. LAW.*, Aug. 2018, at 23 (discussing problems with the types of diversity training done in workplaces in the past and suggesting better approaches).

Michelle Silverthorn, *Overcoming Law School Bias*, *LEGAL MGMT.*, Apr. 2016, at 3 (suggesting ways to overcome bias in hiring that favors applicants who attended elite law schools).

Sarah Q. Simmons, *Litigators Beware: Implicit Bias*, *ADVOC.*, Mar./Apr. 2016, at 35 (recommending ways for litigators to be aware of and mitigate implicit biases).

Wendell Y. Tong, *Looking Within for Implicit Bias*, *TRIAL*, June 2017, at 27 (explaining why it is important for lawyers to recognize their own implicit biases and seek ways to mitigate them).

Artika R. Tyner, *Unconscious Bias, Implicit Bias, Microaggressions*, *GPSOLO*, July/Aug. 2019, at 30 (discussing the need for lawyers to transform their organizational cultures, including bar associations and law firms, to achieve inclusion and belonging).

Training and Other Remedies

Renee Nicole Allen & Deshun Harris, *#SocialJustice: Combating Implicit Bias in an Age of Millennials, Colorblindness & Microaggressions*, 18 *U. MD. L.J. RACE RELIGION GENDER & CLASS* 1 (2018) (arguing that law schools have an obligation to train law students about implicit biases and how to combat them).

Patricia G. Devine et al., *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 *J. EXP. SOC. PSYCHOL.* 1267 (2012) (reporting the results of a study on the effectiveness of a program for increasing awareness of implicit bias and reducing its effects).

Sarah M. Jackson, *Using Implicit Bias Training to Improve Attitudes Toward Women in STEM*, 17 SOC. PSYCHOL. EDUC. 419 (2014) (reporting the results of a study finding that diversity training can improve implicit associations about women in science, technology, engineering, and mathematics).

Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CALIF. L. REV. 969 (2006) (assessing whether implicit bias can be controlled by a general strategy of debiasing through law).

Calvin K. Lai et al., *Reducing Implicit Racial Preferences: I. A Comparative Investigation of 17 Interventions*, 143 J. EXP. PSYCHOL.: GEN. 1765 (2014) (reporting mixed results of testing on the effectiveness of debiasing methods proposed in a research contest).

Calvin K. Lai et al., *Reducing Implicit Racial Preferences: II. Intervention Effectiveness Across Time*, 145 J. EXP. PSYCHOL.: GEN. 1001 (2016) (reporting the results of a study finding that interventions intended to reduce implicit racial preferences have only temporary effects).

B. Keith Payne & Heidi A. Vuletich, *Policy Insights from Advances in Implicit Bias Research*, 5 BEHAV. & BRAIN SCI. 49 (2018) (discussing how implicit bias may be best understood as a characteristic of social environments rather than a stable characteristic of individuals, so the best approaches for reducing harm from implicit bias should aim to change social contexts rather than changing people's minds).

Vernellia Randall & Tshaka Randall, *Cutting Across the Bias: Teaching Implicit Bias in Healthcare Law Course*, 61 ST. LOUIS U. L.J. 511 (2017) (discussing how to cover implicit bias in a law school course on healthcare law).

Caroline Turner, *Implicit or Unconscious bias: How Do We Overcome It?*, TORTSOURCE, Summer 2017, at 1 (discussing remedies for the effects of implicit bias).

Language Bias

Farida Ali, *Multilingual Prospective Jurors: Assessing California Standards Twenty Years After Hernandez v. New York*, 8 NW.

J.L. & SOC. POL'Y 236 (2013) (discussing the discriminatory impact of linguistically motivated peremptory challenges).

William Y. Chin, *Linguistic Profiling in Education: How Accent Bias Denies Equal Educational Opportunities to Students of Color*, 12 SCHOLAR 355 (2010) (proposing litigation-based and school-based solutions to address bias against students with accents).

Breann Nu'Uhiwa, "Language Is Never About Language": *Eliminating Language Bias in Federal Education Law to Further Indigenous Rights*, 37 U. HAW. L. REV. 381 (2015) (explaining how federal law and policy have reinforced implicit language biases and promoted English language dominance, with a focus on the effort to debias standardized testing of Hawaiian language immersion students).

LGBTQIA Bias

Robert G. Bagnall et al., Comment, *Burdens on Gay Litigants and Bias in the Court System, Homosexual Panic, Child Custody, and Anonymous Parties*, 19 HARV. C.R.-C.L. L. REV. 497 (1984) (considering how social attitudes toward homosexuality affect judicial decision making, including the pervasive influence of negative stereotypes about gay people in child custody cases).

Susan J. Becker, *Child Sexual Abuse Allegations Against a Lesbian or Gay Parent in a Custody or Visitation Dispute: Battling the Overt and Insidious Bias of Experts and Judges*, 74 DENVER U. L. REV. 75 (1996) (discussing the safeguards needed to detect the existence and impact of bias of expert witnesses in cases involving allegations of child sexual abuse by gay or lesbian parents).

Luke A. Boso, *Urban Bias, Rural Sexual Minorities, and the Courts*, 60 UCLA L. REV. 562 (2013) (arguing that law reflects society's urban bias, making sexual minorities uniquely vulnerable in small towns and rural areas).

Patrick C. Brayer, *Gender Nonconforming Expression and Binary Thinking: Understanding How Implicit Bias Becomes Explicit in the Legal System, Considering the Shooting Death of Philando Castile*, 55 AM. CRIM. L. REV. 44 (2018) (discussing

what lawyers seeking to combat implicit bias in the legal system can learn from artists and thinkers on the cutting edge of gender-nonconforming expression).

Elizabeth J. Levy, *Virgin Fathers: Paternity Law, Assisted Reproductive Technology, and the Legal Bias Against Gay Dads*, 22 AM. U. J. GENDER SOC. POL'Y & L. 893 (2014) (arguing that family law favors “virgin mothers” who conceive through assisted reproductive technology while disfavoring “virgin fathers” who utilize that technology, reflecting a stigma against gay men as fathers).

Jessica Salerno et al., *Give the Kid a Break – But Only if He’s Straight: Retributive Motives Drive Biases Against Gay Youth in Ambiguous Punishment Contexts*, 20 PSYCHOL., PUB. POL'Y & L. 398 (2014) (reporting the results of a study on discrimination in punishment of juvenile sex offenders).

Mark Joseph Stern et al., *A Test to Identify and Remedy Anti-Gay Bias in Child Custody Decisions after Obergefell*, 23 UCLA WOMEN’S L.J. 79 (2016) (proposing a framework for appellate review of claims that judges were biased against gay parents in child custody determinations).

Ronald Wheeler, *About Microaggressions*, 108 LAW. LIBR. J. 321 (2016) (discussing microaggressions against LGBT individuals and proposing solutions for preventing them from occurring).

Mental Disorder Bias

Kristen L. Aggeler, Comment, *Is ADHD a “Handy Excuse”? Remedying Judicial Bias Against ADHD*, 68 UMKC L. REV. 459 (2000) (examining the treatment of Attention Deficit Hyperactivity Disorder in education cases).

Sareen K. Armani, Note, *Coexisting Definitions of Mental Illness: Legal, Medical, and Layperson Understandings Paving a Path for Jury Bias*, 26 S. CAL. REV. L. & SOC. JUST. 213 (2017) (recommending ways to reduce jury bias in legal insanity deliberations, such as by increasing positive media portrayals of mental illness, replacing pejorative legal terminology relating to mental illness, requiring high schools to provide general psychology education classes, and using jury instructions and experts to increase juror

awareness of the problems associated with different definitions of mental illness).

Colleen M. Berryessa, *Genetic Essentialist Biases, Stigma, and Lack of Mitigating Impact on Punishment Decisions*, 3 J.L. & BIOSCIENCES 359 (2016) (discussing how biases about the connection between genetic predispositions and behavior might exacerbate stigmatization of mental disorders and affect punishment decisions about offenders with mental disorders).

Colleen M. Berryessa, *Judicial Stereotyping Associated with Genetic Essentialist Biases Toward Mental Disorders and Potential Negative Effects on Sentencing*, 53 LAW. & SOC'Y REV. 202 (2019) (reporting the results of a study on how judges' biases about psychiatric illnesses and mental disabilities affect criminal sentencing decisions).

Sean O'Brien & Kathleen Wayland, *Implicit Bias and Capital Decision-Making: Using Narrative to Counter Prejudicial Psychiatric Labels*, 43 HOFSTRA L. REV. 751 (2015) (arguing that the best way to counter incomplete and misleading stereotypes and prejudicial psychiatric labels is to present a compelling, humanizing narrative about the developmental trajectory of the defendant's life and family).

John Pyun, Comment, *When Neurogenetics Hurts: Examining the Use of Neuroscience and Genetic Evidence in Sentencing Decisions Through Implicit Bias*, 103 CAL. L. REV. 1019 (2015) (explaining how the use of neurogenetic evidence in capital cases may bring about negative implicit biases against mental illness).

Military Commander Bias

Eric R. Carpenter, *An Empirical Look at Commander Bias in Sexual Assault Cases*, 22 BERKLEY J. CRIM. L. 101 (2017) (reporting the results of a study on whether military commanders are predisposed to believe offenders and blame victims in sexual assault cases).

Narrative Bias

Jeanette L. Schroeder, Note, *The Vulnerability of Asylum Adjudications to Subconscious Cultural Biases*, 97 B.U. L. REV. 315 (2017) (explaining how asylum adjudications are influenced by judges' subconscious narrative biases about what makes a story credible).

Police Bias

Vida B. Johnson, *Bias in Blue: Instructing Jurors to Consider the Testimony of Police Officer Witnesses with Caution*, 44 PEP-PERDINE L. REV. 245 (2017) (calling for jury instructions that explain how police officers may have a professional bias or interest in the outcome of a criminal case).

Political Bias

Adam S. Chilton & Eric A. Posner, *An Empirical Study of Political Bias in Legal Scholarship*, 44 J. LEGAL. STUD. 277 (2015) (reporting the results of a study finding a correlation between law professors' political donations and the political leanings of their scholarship).

Eric A. Posner, *Does Political Bias in the Judiciary Matter?: Implications of Judicial Bias Studies for Legal and Constitutional Reform*, 75 U. CHI. L. REV. 853 (2008) (evaluating concerns about political bias in judging and proposed reforms).

Cassandra Burke Robertson, *Judicial Impartiality in a Partisan Era*, 70 FLA. L. REV. 739 (2018) (analyzing the mechanisms available to prevent the appearance of bias arising from a judge's political views).

Pregnancy Bias

Jennifer Bennett Shinall, *The Pregnancy Penalty*, 103 MINN. L. REV. 749 (2018) (endorsing the use of paid family leave legislation as a remedy for pregnancy discrimination in employment).

Brianna L. Eaton, Comment, *Pregnancy Discrimination: Pregnant Women Need More Protection in the Workplace*, 64 S.D. L.

REV. 244 (2019) (reviewing the history of pregnancy discrimination in employment and proposing solutions to eliminate it).

Sandy Mastro, Note, *Courtroom Bias: Gender Discrimination Against Pregnant Litigators*, 8 WM. & MARY J. WOMEN & L. 155 (2001) (suggesting ways to address discrimination against pregnant litigators in the courtroom).

Racial Bias

Child and Family Law

Sandra T. Azar & Phillip Atiba Goff, *Can Science Help Solomon? Child Maltreatment Cases and the Potential for Racial and Ethnic Bias in Decision Making*, 81 ST. JOHN'S L. REV. 533 (2007) (examining concerns about child protection statutes being applied in ways that discriminate along racial and ethnic lines).

Rakesh Beniwal, Note, *Implicit Bias in Child Welfare: Overcoming Intent*, 49 CONN. L. REV. 1021 (2017) (arguing that implicit racial bias results in a child welfare system that disparately impacts people of color at every stage of child protection intervention).

Tanya Asim Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215 (2013) (arguing for reconsideration of the foster care system and the racial disparities it routinely fosters).

Leah A. Hill, *Do You See What I See? Reflections on How Bias Infiltrates the New York City Family Court – The Case of the Court Ordered Investigation*, 40 COLUM. J.L. & SOC. PROBS. 527 (2007) (describing racial bias in the family court system in New York City, particularly in the court ordered investigation process).

Solangel Maldonado, *Bias in the Family: Race, Ethnicity, and Culture in Custody Disputes*, 55 FAM. CT. REV. 213 (2017) (examining how biases about parents' racial, ethnic, or cultural backgrounds influence court decisions about child custody and discussing individual strategies and institutional reforms that might reduce the impact of biases in custody cases).

Criminal Justice and Law Enforcement

Jody Armour, *Where Bias Lives in the Criminal Law and Its Processes: How Judges and Jurors Socially Construct Black Criminals*, 45 AM. J. CRIM. L. 203 (2018) (discussing how studies of attribution bias and ingroup empathy bias show that black defendants systematically suffer harsher moral appraisals than similarly situated white wrongdoers).

Lydette S. Assefa, *Assessing Dangerousness Amidst Racial Stereotypes: An Analysis of the Role of Racial Bias in Bond Decisions and Ideas for Reform*, 108 J. CRIM. L. & CRIMINOLOGY 653 (2018) (suggesting reforms to reduce effects of racial bias on decisions about bonds in criminal cases).

James Babikian, Note, *Cleaving the Gordian Knot: Implicit Bias, Selective Prosecution, & Charging Guidelines*, 42 AM. J. CRIM. L. 139 (2015) (proposing the adoption of prosecutorial charging guidelines as a means of addressing implicit racial bias in prosecutorial decision making).

Bridgette Baldwin, *Black, White, and Blue: Bias, Profiling, and Policing in the Age of Black Lives Matter*, 40 W. NEW ENGL. L. REV. 431 (2018) (discussing implicit racial bias and its effect on police treatment of African Americans).

Mark W. Bennett, *The Implicit Racial Bias in Sentencing: The Next Frontier*, 126 YALE L.J. FORUM 391 (2017) (discussing how judges' cognitive blind spots contribute to implicit racial bias in criminal sentencing).

Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL'Y REV. 149 (2010) (explaining how implicit bias affects jury selection and assessing remedies such as training and cognitive correction).

Morgan A. Birck, Note, *Do You See What I See? Problems with Juror Bias in Viewing Body-Camera Video Evidence*, 24 MICH. J. RACE & L. 153 (2018) (discussing how implicit biases and the myth of video objectivity can create problems in relying on body-camera footage in cases of police violence).

Jessica Blakemore, Note, *Implicit Racial Bias and Public Defenders*, 29 *GEO. J. LEG. ETHICS* 833 (2016) (explaining why implicit racial bias poses problems for public defenders and suggesting ways to mitigate the impact of such bias).

William M. Carter, Jr., *Whren's Flawed Assumptions Regarding Race, History, and Unconscious Bias*, 66 *CASE W. RES. L. REV.* 947 (2015) (arguing that racially motivated policing should be reconceptualized as a Thirteenth Amendment problem rather than a Fourth or Fourteenth Amendment issue).

William Y. Chin, *Racial Cumulative Disadvantage: The Cumulative Effects of Racial Bias at Multiple Decision Points in the Criminal Justice System*, 6 *WAKE FOREST J.L. & POL'Y* 441 (2016) (discussing how little biases by multiple actors, from police to prosecutors and judges, become significant when they occur across multiple stages of the criminal justice system).

Diana R. Donahoe, *Not-So-Great Expectations: Implicit Racial Bias in the Supreme Court's Consent to Search Doctrine*, 55 *AM. CRIM. L. REV.* 619 (2018) (discussing how the creation of a "social expectation" doctrine in Fourth Amendment cases about third-party consent to searches opens the door to implicit bias because judges may make assumptions about uniform societal expectations that apply in most white, privileged communities but do not take into account the expectations of racial minorities).

Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 *J. PERSONALITY & SOC. PSYCHOL.* 876 (2004) (discussing the large body of research by social psychologists finding that people have implicit biases relating race to perceptions about violence and crime).

Demetria D. Frank, *The Proof Is in the Prejudice: Implicit Racial Bias, Uncharged Act Evidence & the Colorblind Courtroom*, 32 *HARV. J. RACIAL & ETHNIC JUST.* 1 (2016) (considering ways to revise the rules on admissibility of uncharged act character evidence in order to reduce the impact of implicit racial biases).

Amber Hall, Note, *Using Legal Ethics to Improve Implicit Bias in Prosecutorial Discretion*, 42 *J. LEGAL. PROFESSION* 111 (2017) (arguing that modifying legal ethics rules is the best way to ad-

dress the problem of implicit bias in the exercise of prosecutorial discretion).

M. Eve Hanan, *Remorse Bias*, 83 MO. L. REV. 301 (2018) (examining how implicit racial bias affects judges' assessments about the remorse shown by criminal defendants).

Cristal Harris, Comment, *Dark Innocence: Retraining Police with Mindfulness Practices to Aid in Squelching Implicit Bias*, 51 U.S.F. L. REV. 103 (2017) (discussing how mindfulness practices in police training could be a significant way to reduce racial and identity profiling by police officers).

Shana Heller, *Dehumanization and Implicit Bias: Why Courts Should Preclude References to Animal Imagery in Criminal Trials*, CRIM. L. BULL., Summer 2015, at 4 (arguing that prosecutors should be prohibited from dehumanizing defendants through the use of animal imagery or rhetoric, such as referring to the defendant as an "animal," a "beast," or alluding to a specific type of animal such as a "tiger" or a "pack of wolves").

Jonathan Kahn, *The 911 Covenant: Policing Black Bodies in White Spaces and the Limits of Implicit Bias as a Tool of Racial Justice*, 15 STAN. J. C.R. & C.L. 1 (2019) (critiquing the emergence of implicit bias as a master narrative for explaining racism and questioning whether focusing on implicit bias may hinder the pursuit of racial justice).

Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005) (asserting that implicit racial bias is exacerbated by local news coverage of violent crimes prominently featuring racial minorities).

Lewis R. Katz, Whren at Twenty: *Systemic Racial Bias and the Criminal Justice System*, 66 CASE W. RES. L. REV. 923 (2015) (introducing a panel discussion on racial policing and the legacy of the Supreme Court's decision in *Whren v. United States* to allow racial profiling by police stopping vehicles).

Sherri Lee Keene, *Raising Arguments About the Potential Influence of Implicit Racial Bias in Police Stops*, CRIM. JUST., Summer 2017, at 35 (advising criminal defense lawyers on how to make arguments about implicit racial bias influencing police officers' judgments and suspicions).

Kenneth Lawson, *Police Shootings of Black Men and Implicit Racial Bias: Can't We All Just Get Along*, 37 U. HAW. L. REV. 339 (2015) (spotlighting the role of implicit racial bias in police shootings of unarmed Black males).

Cynthia Lee, *Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training*, 79 LAW. & CONTEMP. PROBS. 145 (2016) (proposing that police departments require training to reduce bias in the use of deadly force and martial arts training to give officers confidence in their ability to handle volatile situations without resorting to the use of guns).

Justin D. Levinson & Robert J. Smith, *Systemic Implicit Bias*, 126 YALE L.J. FORUM 406 (2017) (discussing the implications of systemic implicit racial bias for Eighth Amendment analysis of the death penalty and juvenile life sentences without parole).

Liku T. Madoshi, Comment, *Policing the Police: Implicit Racial Bias & the Necessity of Limiting Police Discretion to Use Militarized Gear Against Civilian Protesters*, 44 S.U. L. REV. 118 (2016) (arguing for limiting the discretion of police to use military gear against protesters, because of the risk of implicit racial biases in militarized approaches).

Sandra G. Mayson, *Bias In, Bias Out*, 128 YALE L.J. 2218 (2019) (discussing the disparate racial impacts created by using algorithmic risk assessments to estimate the likelihood of a person committing crimes in the future).

Julian R. Murphy, Note, *Is It Recording? – Racial Bias, Police Accountability, and the Body-Worn Camera Activation Policies of the Ten Largest Metropolitan Police Departments in the USA*, 9 COLUM. J. RACE & L. 141 (2018) (offering a draft policy for police departments seeking to better use body-worn cameras to reduce racially biased police practices).

Praatika Prasad, Note, *Implicit Racial Bias in Prosecutorial Summations: Proposing an Integrated Response*, 86 FORDHAM L. REV. 3091 (2018) (suggesting ways to deter prosecutors from using language that triggers implicit racial biases).

Megan Quattlebaum, *Let's Get Real: Behavioral Realism, Implicit Bias, and the Reasonable Police Officer*, 14 STAN. J. C.R. & C.L. 1 (2018) (arguing that Fourth Amendment standards for po-

lice searches should take into account the risk that implicit biases lead to unintentional racial profiling).

L. Song Richardson, *Implicit Racial Bias and Racial Anxiety: Implications for Stops and Frisks*, 15 OHIO ST. J. CRIM. L. 73 (2017) (drawing on lessons from social psychology to show how the *Terry* doctrine facilitates the influence of implicit racial bias).

L. Song Richardson, *Implicit Racial Bias and the Perpetrator Perspective: A Response to Reasonable but Unconstitutional*, 83 GEO. WASH. L. REV. 1008 (2015) (discussing how legal analysis of racial discrimination that focuses on the perpetrator's perspective misapprehends the harm of racial discrimination, which occurs regardless of whether a malicious racial actor exists).

L. Song Richardson, *Systemic Triage: Implicit Racial Bias in the Criminal Courtroom*, 126 YALE L.J. 862 (2017) (reviewing NICOLE VAN CLEVE, *CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT* (2016)).

Francis X. Shen, *Minority Mens Rea: Racial Bias and Criminal Mental States*, 68 HASTINGS L.J. 1007 (2017) (reporting the results of a study which found that jurors assessing a fictional story did not assign more culpable mental states to characters named Jamal and Lakisha than characters named John and Emily).

Robert J. Smith, *Reducing Racially Disparate Police Outcomes: Is Implicit Bias Training the Answer?*, 37 U. HAW. L. REV. 295 (2015) (suggesting that implicit bias training may be a small step toward racial equality in law enforcement but its value should not be overestimated).

Robert J. Smith & Justin D. Levinson, *The Impact of Racial Bias on the Exercise of Prosecutorial Discretion*, 35 U. SEATTLE L. REV. 795 (2012) (discussing how implicit racial bias affects prosecutors in criminal cases).

Reema Sood, *Biases Behind Sexual Assault: A Thirteenth Amendment Solution to Under-Enforcement of the Rape of Black Women*, 18 U. MD. L.J. RACE RELIGION GENDER & CLASS 405 (2018) (exploring the connections between slavery and the continuing devaluation of Black women's bodies).

Jillian K. Swencionis & Phillip Atiba Goff, *The Psychological Science of Racial Bias and Policing*, 23 *PSYCHOL. PUB. POL'Y & L.* 398 (2017) (outlining a set of risk factors for bias in policing).

Decision Making

Michael I. Norton et al., *Mixed Motives and Racial Bias*, 12 *PSYCHOL., PUB. POL'Y & L.* 36 (2006) (presenting the results of studies on decisions based on nonracial as well as racial considerations).

Effects on Judges

Marla N. Greenstein, *Manifesting Implicit Bias*, *JUDGES' J.*, Fall 2015, at 40 (encouraging judges to become more aware of personal biases and assumptions).

Justin D. Levinson et al., *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 *FLA. L. REV.* 63 (2017) (reporting the results of a study on implicit biases of federal and state judges, which found that judges had strong to moderate negative implicit stereotypes against Asian-Americans and Jews).

Gregory S. Parks, *Judicial Recusal: Cognitive Biases and Racial Stereotyping*, 18 *NYU J. LEGIS. & PUB. POL'Y* 681 (2015) (exploring implicit racial bias in judicial decision making and its implications for judicial recusal).

Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 *NOTRE DAME L. REV.* 1195 (2009) (reporting the results of a study of a large sample of trial judges, finding that judges harbor the same kinds of implicit biases as others and that these biases can influence their judgment).

Effects on Jurors

Graham R. Cronogue, *Lies, Damn Lies, and Batson Challenges: The Right to Use Statistical Evidence to Prove Racial Bias*, 6 *U. MIAMI RACE & SOC. JUST.* 103 (2016) (discussing the extent to which capital defendants should be able to use statistics to attack a wrongful conviction caused by racial bias in jury selection).

Fanta Freeman, Note, *Do I Look Like I Have an Attitude? How Stereotypes of Black Women on Television Adversely Impact*

Black Female Defendants Through the Implicit Bias of Jurors, 11 DREXEL L. REV. 651 (2019) (proposing changes to voir dire that could help to address implicit bias against black female defendants).

Cynthia Lee, *A New Approach to Voir Dire on Racial Bias*, 5 U.C. IRVINE L. REV. 843 (2015) (explaining steps that attorneys can take in voir dire to combat implicit racial bias in criminal cases).

Justin D. Levinson et al., *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345 (2007) (describing a study of how people's memories of a fictional account of a fight were affected by the race of the fight's participants).

Justin D. Levinson et al., *Race and Retribution: An Empirical Study of Implicit Bias and Punishment in America*, 53 U.C. DAVIS L. REV. 839 (2019) (reporting the results of a national study of over five hundred jury-eligible citizens, which found that Americans implicitly associate the concepts of payback and retribution with Black and the concepts of mercy and leniency with White).

Natalie Salmanowitz, *The Impact of Virtual Reality on Implicit Racial Bias and Mock Legal Decisions*, 5 J.L. & BIOSCIENCES 174 (2018) (reporting the results of a study on how the use of virtual reality technology can reduce implicit racial bias scores and influence how people evaluate an ambiguous legal case).

Natalie Salmanowitz, *Unconventional Methods for a Traditional Setting: The Use of Virtual Reality to Reduce Implicit Racial Bias in the Courtroom*, 15 U.N.H. L. REV. 117 (2016) (arguing that virtual reality training with judges and jurors can reduce the impact of implicit racial bias).

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